

**STATE OF DELAWARE**

**PUBLIC EMPLOYMENT RELATIONS BOARD**

<b>INTERNATIONAL LONGSHOREMEN’S ASSOCIATION, LOCAL 1694-1, AFL-CIO,</b>	)	
	)	
Charging Party,	)	<b><u>ULP 14-10-982</u></b>
	)	
v.	)	
	)	<b>DECISION ON MOTION and ORDER OF DISMISSAL</b>
<b>DIAMOND STATE PORT CORPORATION,</b>	)	
	)	
Respondent.	)	

**BACKGROUND**

The Diamond State Port Corporation (DSPC) is a public employer within the meaning of 19 Del. C. §1302(p) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (“PERA”).

The International Longshoremen’s Association (ILA) is an employee representative within the meaning of 19 Del.C. §1302(i). By and through its affiliated Local 1694-1 (Local 1694-1), the ILA is the exclusive representative of a bargaining unit of DSPC employees within the meaning of 19 Del.C. §1302(j).

At all times relevant to the processing of this Charge, the ILA and DSPC have been parties to a collective bargaining agreement, which has a term of October 1, 2010 through September 30, 2013. The parties were engaged in negotiations for a successor agreement when on November 6, 2013, and again on April 28, 2014, and May 5, 2014, the ILA requested extensive information from DSPC. DSPC provided limited information in response to the ILA requests only on December 13, 2013.

On October 28, 2014, Local 1694-1 filed this unfair labor practice charge with the Public

Employment Relations Board (PERB) alleging DSPC engaged in violation of §1307(a)(1), (a)(2) and (a)(5) of the PERA, which state:

§1307. Unfair labor practices

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
  - (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
  - (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
  - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.

The Charge alleged that by failing to provide information requested by ILA which was relevant and necessary for the union to “formulate proposals and make intelligent bargaining decisions” during the course of collective bargaining, DSPC interfered with the rights of bargaining unit employees and with the representational obligations of ILA Local 1694-1.

On November 24, 2014, DSPC filed its Answer denying the material allegations set forth in the Charge, asserting its duty to provide information expired when the ILA requested that the collective bargaining impasse proceed to binding interest arbitration.

A Probable Cause Determination was issued on December 12, 2014, finding that the pleadings “constituted probable cause to believe that an unfair labor practice, as alleged, may have occurred.” The Probable Cause Determination further provided:

The parties are directed to provide expedited argument concerning whether there is a continuing duty to provide information following initiation of the binding interest arbitration process under 19 Del.C. §1315. This issue will be decided as a preliminary matter.

If it is determined that the duty to provide information continues after initiation of the binding interest arbitration process, a hearing will be convened for the purpose of creating a record on which a determination can be made as to whether the employer did, in fact violate its statutory obligations.

Following receipt of the requested argument, an Interim Decision on the Preliminary Issue was issued on February 9, 2015. The decision held that during the period of abeyance in the interest arbitration proceedings when the parties are engaged in efforts to resolve their bargaining dispute, they are obligated to negotiate in good faith under the PERA. This good faith obligation includes the duty to provide information which is reasonably necessary to the union to fulfill its representational responsibilities under the law.

The Interim Decision also stated “it would be counter to the purposes and intent of the PERA to find the parties are relieved of their duty to bargain in good faith during a period in which they are actively engaged in negotiations or ‘alternative methods to achieve a final and binding resolution’ of their impasse.” By agreement of the parties, the processing of the binding interest arbitration was suspended prior to the appointment of the arbitrator, pending the outcome of the ongoing facilitation effort to reach agreement on the terms of a successor agreement.

The interim decision also directed that an expedited hearing be convened for the purpose of creating an evidentiary record on which a determination could be made as to whether DSPC had failed or refused to meet its statutory obligations.

On or about March 11, 2015 (prior to the expedited hearing), the parties executed a comprehensive settlement agreement which included, *inter alia*, the terms of a successor collective bargaining agreement. Pursuant to that agreement, DSPC forwarded to the ILA a draft stipulation to withdraw three (3) unfair labor practice cases, including the instant Charge, on March 11, 2015. The ILA did not respond. On May 15, 2015, DSPC reiterated its request. The ILA responded it would only stipulate to the dismissal of the instant Charge after DSPC provided certain information previously requested by the ILA.

On June 17, 2015, DSPC filed a Motion to Dismiss the Charge. On July 1, 2015, the ILA

filed its Response opposing DSPC's Motion to Dismiss. This decision results from consideration of the entire record, including the undisputed facts as they relate to the settlement of the parties collective bargaining negotiations in March, 2015.

### **DISCUSSION**

The scope and purpose of the unfair labor practice charge filed by the ILA was specifically stated therein:

16. The DSPC's refusal to provide information relevant to collective bargaining is a violation of Section 1307(a)(1), (2) and (5) of the Act.
17. DSPC violates Section 1307(a)(1) by denying the union information required to formulate proposals and make intelligent bargaining decisions and attempting, thereby, to coerce its employees into accepting substandard terms and conditions of employment.
18. DSPC violates Section 1307(a)(2) by denying the union relevant information for the purpose of interfering with the union's ability to perform its obligation to bargain on behalf of its members.
19. DSPC violates its duty to bargain in good faith under Section 1307(a)(5) by refusing to provide relevant information necessary for the union to intelligently determine facts, assess its position and decide the proper course of bargaining. *Unfair Labor Practice Charge* (Oct. 28, 2014).

Based on the pleadings, the Hearing Officer determined there was sufficient probable cause to continue the processing of the charge. The probable cause determination identified the question of whether there is a continuing duty to provide information under the statute after the initiation of the binding interest arbitration procedure pursuant to 19 Del.C. §1315, as a preliminary issue. Written argument was accepted from the parties, and an interim decision on the preliminary matter was issued:

For the reasons set forth above, it is determined that during the period of abeyance in the binding interest arbitration proceedings in which these parties were engaged in efforts to resolve their bargaining impasse, they were obligated under the PERA to bargain in good faith. The duty to bargain in good faith includes the duty to provide information which is reasonably

necessary to the union's performance of its representational responsibilities under the PERA, consistent with the purposes of the statute and PERB case law.

An expedited hearing will be convened forthwith for the purpose of creating an evidentiary record upon which a decision can be rendered as to whether DSPC has failed or refused to meet its statutory duty to bargain in good faith and/or interfered with the rights of bargaining unit employees or Local 1694-1 by failing to produce information which is necessary and relevant for Local 1694-1 to meet its statutory duty to represent bargaining unit employees in collective bargaining.<sup>1</sup>

Elsewhere in the decision, the purpose of the hearing was explained:

The specific circumstances and facts of this unfair labor practice case must now be considered. A request for information must be made in good faith and the response to that request must also be made in good faith.<sup>2</sup> The union has the initial burden to establish the relevance of the requested information. Although "the burden is not exceptionally heavy", there must be some proffer as to relevance.<sup>3</sup>

... Once the presumption of relevance is established, the burden shifts to the employer to respond in good faith in a reasonable and prompt manner.<sup>4</sup> The parties remain under a good faith obligation to attempt to resolve any issues concerning the scope of the request and/or method of production.<sup>5</sup>

The expedited hearing was never scheduled or held because the parties were able to successfully conclude their negotiations for a successor agreement on March 11, 2015. The terms of the successor agreement were reduced to writing and executed by the parties on or before April 27, 2015.

It is logical and reasonable that a decision rendered in any unfair labor practice proceeding is limited by the scope of the pleadings. In this case, the ILA sought information it

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<sup>1</sup> *ILA 1694-1 v. DSPC*, Interim Decision on Preliminary Matter, ULP 14-10-982, VIII PERB 6383, 6391 (2015).

<sup>2</sup> *IBEW Local 2270 v. Del. Transit Corporation*, ULP 14-01-941, VIII PERB 6001, 6006 (2014).

<sup>3</sup> *Boise Cascade Corporation and the United Paperworkers International Union, Local 900*, 279 NLRB 422 (NLRB, 1986).

<sup>4</sup> *Tower Books*, 273 NLRB 672 (1984).

<sup>5</sup> *ILA 1694-1 v. DSPC*, Interim Decision, *Supra.* at p. 6389.

defined to be “necessary for the union to intelligently determine facts, assess its position and decide the proper course of bargaining.” There was no assertion made that the information was also necessary to investigate or enforce the terms of the existing collective bargaining agreement or other representational responsibilities of the union outside of the ongoing negotiations.

A determination was never made as to whether DSPC failed or refused to meet its statutory obligations or that the requested information was necessary and relevant for Local 1694-1 to meet its statutory duty to represent bargaining unit employees in collective bargaining. The expedited hearing was not held and a determination on the merits as to whether DSPC was obligated to produce any or all of the requested information was unnecessary because the parties were successful in completing their negotiations for a successor agreement to their mutual satisfaction.

In response to DSPC’s motion to dismiss the unfair labor practice charge, the ILA asserted 1) DSPC did not provide the information it “promised in return for the union’s signing of the confidentiality agreement”; and 2) the execution of a collective bargaining agreement does not render a request for information relevant to the collective bargaining moot.<sup>6</sup>

The parties dispute whether the terms of their negotiated settlement agreement require the ILA to withdraw the charge. Whether the parties agreed on the terms under which this charge would be withdrawn is, however, irrelevant because the circumstances under which the charge arose have substantially changed. The ILA sought information it believed was necessary for it to evaluate the employer’s proposals, assess its position and decide upon a bargaining strategy. With the successful completion of the negotiations and execution of the successor collective

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<sup>6</sup> Citing *Lumber and Mill Employers Association*, 265 NLRB 199, 201 (1982), *enf’d* 736 F.2d 507 (9<sup>th</sup> Cir., 1984).

bargaining agreement, the articulated and limited purposes for which ILA requested the information no longer exist. The charge is, therefore, moot.

For this reason, DSPC's motion is granted and this unfair labor practice is dismissed. If, as the ILA asserts in its argument, some or all of the information requested becomes relevant to grievance processing and contract enforcement, it may make a relevant and reasonable request when appropriate circumstances arise during the term of the agreement. Further, because the charge is determined to be moot, it is unnecessary, at this time, to address the argument advanced by the parties concerning the enforceability of a settlement agreement.

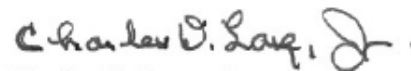
### **DECISION**

Based upon the record and the specific circumstances unique to this case, it is determined that the unfair labor practice charge filed by ILA Local 1694-1 seeking to compel the DSPC to provide relevant information which was "necessary for the union to intelligently determine facts, assess its position and decide the proper course of bargaining" is no longer viable as the parties have successfully completed their negotiations and have executed a successor collective bargaining agreement.

WHEREFORE, DSPC's motion is granted and this Charge is hereby dismissed.

**IT IS SO ORDERED.**

Date: September 14, 2015



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CHARLES D. LONG, JR.  
Hearing Officer  
Public Employment Relations Board